

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FREDERICK DIAZ,

Plaintiff,

-v-

9:15-CV-776
(DNH/DJS)

STEPHANIE PELO, Grievance Supervisor,
Great Meadow Correctional Facility; C. FRASER,
Sergeant, Great Meadow Correctional Facility;
KENNETH MCKEIGHAN, Industry
Superintendent, Great Meadow Correctional
Facility; RODNEY EASTMAN, Deputy
Superintendent of Security, Great Meadow
Correctional Facility; CHRISTOPHER MILLER,
Superintendent, Great Meadow Correctional
Facility; and RACHEL A. YOUNG, Acting
Director of the Office of Guidance & Counseling,

Defendants.

APPEARANCES:

FREDERICK DIAZ
86-B-2129
Plaintiff pro se
Elmira Correctional Facility
P.O. Box 500
Elmira, NY 14902

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General - Albany
Attorney for Defendants
The Capitol
Albany, NY 12224

RYAN L. ABEL, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Frederick Diaz brought this civil rights action pursuant to 42 U.S.C. § 1983. On February 15, 2019, the Honorable Daniel J. Stewart, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion for summary judgment be granted in part and denied in part and that plaintiff's cross-motion for summary judgment be denied. Plaintiff and defendant Young timely filed objections to the Report-Recommendation.

Based upon a de novo review of the portions of the Report-Recommendation to which the parties objected, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. Defendants' motion for summary judgment is GRANTED in part and DENIED in part;

2. Defendants' motion for summary judgment with respect to plaintiff's due process claim against defendant Young is DENIED and that claim will proceed to trial;

3. Defendants' motion for summary judgment with respect to all other claims is GRANTED;

4. The following claims are DISMISSED:

a. due process claim against defendant Pelo for deduction of \$1,660.20 from plaintiff's inmate account;

b. retaliation claim against defendants Pelo and Young for deducting \$1,660.20 from plaintiff's inmate account;

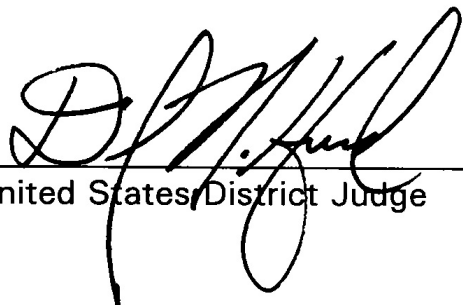
- c. retaliation claim against defendants Fraser and Eastman for issuing plaintiff a false IPC report;
- d. due process claim against defendant McKeighan regarding the IPC and IGRC impeachment hearings;
- e. retaliation claim against defendant McKeighan for affirming plaintiff's IPC placement;
- f. retaliation claim against defendants Eastman and Miller for upholding plaintiff's IPC placement; and
- g. retaliation claim against defendant Pelo for issuing plaintiff a false misbehavior report;

5. Plaintiff's cross-motion for summary judgment is DENIED;

6. Trial on the sole remaining due process claim against defendant Young is scheduled for Tuesday, August 6, 2019, in Utica, New York with pre-trial papers due on or before 12:00 p.m. on Tuesday, July 23, 2019; and

7. Plaintiff's prior request for pro-bono trial counsel, ECF No. 58, is considered renewed and GRANTED and counsel will be assigned in due course.

IT IS SO ORDERED.


United States District Judge

Dated: March 28, 2019
Utica, New York.